

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia Company,
and JB EXPLORATION 1, LLC, a
West Virginia Company,**

Plaintiffs,

vs.

**Civil Action No.: 18-C-2
Presiding: Judge Lorensen
Resolution: Judge Carl**

FILED IN OFFICE

NOV 07 2019

**MILLIE FARNSWORTH
CIRCUIT COURT CLERK
PLEASANTS CO WV**

**BLACKROCK ENTERPRISES, LLC,
a West Virginia Company, and
MICHAEL L. BENEDUM,**

Defendants.

**ORDER DENYING BLACKROCK'S
MOTION TO COMPEL PLAINTIFFS AND THIRD-PARTY DEFENDANTS
TO COMPLY WITH COURT ORDER AND REQUEST FOR SANCTIONS**

This matter came before the Court this 7th day of November 2019 upon Defendants Blackrock Enterprises, LLC and Michael L. Benedum's Motion to Compel Plaintiffs and Third-Party Defendants to Comply With Court Order and Request for Sanctions. The Defendants, Blackrock Enterprises, LLC and Michael L. Benedum (hereinafter "Defendants"), by counsel, Brian R. Swiger, Esq., and Plaintiffs and Third-Party Defendants, BB Land, LLC and JB Exploration 1, LLC (hereinafter "Plaintiffs"), by counsel, Ronda L. Harvey, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not

aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter was commenced with the filing of the Complaint on January 11, 2018, alleging causes of action for breach of contract (Count I); declaratory judgment (Count II); reformation of contract (Count III); tortious interference with contracts (Count IV); and fraud in the inducement (Count V). *See* Compl. The allegations stem from an alleged agreement wherein the parties would lease property in Pleasants County, West Virginia for the purpose of drilling exploratory wells for oil and/or gas, and the parties would jointly share in the risk and cost in developing the properties. *Id.* The agreement at issue is a complex financial agreement designated by the parties as a lease acquisition agreement (hereinafter “LAA”) to acquire oil and gas leases and property interests in Pleasants and Tyler Counties and to develop properties by drilling oil and gas wells. *See* Ctrclm. and Th. Pty. Compl., p. 18-20, Ex. A. The location of the leased or bought oil and gas rights is known as the area of mutual interest (hereinafter “AMI”). *Id.* at 20, Ex. A.
2. On February 15, 2018, Defendant Blackrock filed its Answer, Counterclaim, and Third-Party Complaint of Blackrock Enterprises, LLC, alleging causes of action for breach of contract against Plaintiffs (Count I); breach of contract against Plaintiffs (Count II); breach of contract against Plaintiffs (Count III); breach of contract against Plaintiffs (Count IV); breach of contract against Plaintiffs (Count V); breach of duty of good faith and fair dealing against Plaintiffs (Count VI); breach of duty of good faith and fair dealing against Plaintiffs (Count VII); breach of duty of good faith and

fair dealing against Plaintiffs (Count VIII); anticipatory breach of contract against Plaintiffs (Count IX); breach of duty of good faith and fair dealing against Plaintiffs (Count X); conversion against the Jay-Bee Parties (Count XI); tortious interference with contracts and prospective economic relations against the Jay-Bee Parties and Plaintiffs (Count XII); tortious interference with contracts and prospective economic relations against the Jay-Bee Parties and Plaintiffs (Count XIII); trade libel and commercial disparagement against the Jay-Bee Parties (Count XIV); accounting against the Jay-Bee Parties (Count XV); declaratory judgment (Count XVI); and declaratory judgment (Count XVII). *See* Ctrclm. and Th. Pty. Compl.

3. On October 7, 2019, Plaintiffs and Third-Party Defendants filed a Motion for Protective Order, seeking a court Order cancelling additional corporate depositions of Mr. Randy Broda and Mr. Brian Paugh scheduled for October 9-11, 2019 and October 14-16, 2019, stating that they are corporate designees of various entities in this matter who have both been previously deposed for a total of five days in this litigation and that further deposition is unnecessary given the amount of time spent. *See* Pl's Mot., p. 1, 5.
4. A hearing on this matter was set for October 8, 2019.
5. On October 8, 2019, Defendants filed their Response to Plaintiffs' and Third-Party Defendants' Motion for Protective Order, stating the motion should be denied and it was agreed upon that these corporate depositions would be continued. *See* Def's Resp., p. 1-2.
6. On October 8, 2019, a hearing was held in this matter, wherein the undersigned listened to testimony regarding the previous depositions, the subject matters left to

collect testimony on, the reported evasiveness of the witness(es), and wherein the undersigned ordered another eight hours for Mr. Broda and another eight more hours for Mr. Paugh. Further, the undersigned iterated that any remaining depositions which need to take place are limited to eight hours each, and any non-party witness is limited to four hours each.

7. On October 18, 2019, the Court issued its Order Denying in Part Plaintiffs' and Third-Party Defendants' Motion for Protective Order, reiterating the findings made orally at the hearing, including a finding that the continued depositions of Mr. Broda and Mr. Paugh were ordered, to be limited to eight more hours for each man. *See* Ord., 10/18/19, p. 6. Further, the Court ordered in the October 18, 2019 Order that any remaining party witness depositions which need to take place in this litigation are hereby limited to eight hours each, and any non-party witness is limited to four hours each. *Id.*
8. On October 28, 2019, Defendants Blackrock Enterprises, LLC and Michael L. Benedum filed the instant Motion to Compel Plaintiffs and Third-Party Defendants to Comply With Court Order and Request for Sanctions, arguing the eight additional hours the Court ordered for the re-deposition of Mr. Broda and Mr. Paugh requires eight hours for Mr. Broda and Mr. Paugh on behalf each of the several business entities for a total of sixty-two more hours of continued deposition of Mr. Broda and Mr. Paugh instead of sixteen¹ more hours. *See* Def's Mot., p. 2.
9. On October 30, 2019, Plaintiffs and Third-Party Defendants BB Land, LLC and JB Exploration 1, LLC filed Plaintiffs' Response in Opposition to Defendant and Third-

¹ Sixteen total hours comprised of eight hours for Mr. Broda plus eight hours for Mr. Paugh.

Party Plaintiffs' and Third-Party Defendants' Response to Defendants' Most Recent Motion to Compel, arguing that instead, the Court ordered a total of eight hours for Mr. Broda and eight hours for Mr. Paugh, regardless of the business entity or topic covered. *See* Pl's Resp., p. 2-3.

10. No Reply was filed.

11. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

The Court addresses the instant motion to compel Plaintiffs and Third-Party Defendants to comply with this Court's October 18, 2019 Order regarding the continuation of the corporate depositions. Generally,

Civil discovery is governed by the West Virginia Rules of Civil Procedure, Rules 26 through 37. The Rules of Civil Procedure generally provide for broad discovery to ferret out evidence which is in some degree relevant to the contested issue.

Syl. Pt. 1, in part, *Evans v. Mutual Min.*, 199 W.Va. 526, 485 S.E.2d 695 (1997) (internal quotations and citations omitted).

Parties may obtain discovery regarding any matter relevant to the subject matter involved in the pending action. *See* W. Va. R. Civ. P. 26(b)(1). Pursuant to the West Virginia Rule of Civil Procedure 37(a), a trial court may compel full and complete discovery. W. Va. R. Civ. P. 37(a). If a party fails to cooperate in discovery, "upon reasonable notice to other parties and all persons affected thereby, [a party] may apply for an order compelling discovery." *Id.*

On a prior day, Plaintiffs and Third-Party Defendants filed a motion for protective order, seeking to preclude 30(b)(7) depositions scheduled for October 9-11, 2019 and October 14-16, 2019. Plaintiffs and Third-Party Defendants averred that the subjects, Mr. Broda and Mr. Paugh,

had already been through five (5) days total of deposition. *See* Mot. for Prot. Ord., p. 2.

Plaintiffs and Third-Party Defendants averred further that Defendants seek to continue these depositions for six (6) additional days, a length of time that it, in totality with the five days already completed, considers excessive². *Id.* at 4-5.

Defendant, on the other hand, argued the depositions comprised of incomplete depositions that needed to be finished. Defendants further argued Mr. Broda had been evasive and combative, contributing to the time-consuming nature of the corporate depositions. *See* Defs' Mot., p. 8. The Court, balancing the considerations regarding the substantial amount of time in this litigation that has been devoted to the depositions of Mr. Broda and Mr. Paugh, as well as the need to get the matter to a resolution, ruled that the depositions of Mr. Broda and Mr. Paugh may continue pursuant to certain limitations. The undersigned further instructed counsel at the hearing to instruct their witnesses to answer responsively and directly.

The Court, at the hearing and in its October 18, 2019 Order, found that "the continued deposition of Mr. Broda and Mr. Paugh is ORDERED, with a limit to eight hours each". *See* Ord., 10/18/19.

Defendants aver now Mr. Broda and Mr. Paugh should be subject to depositions lasting up to eight (8) hours each for various corporate entities. *See* Def's Mot., p. 5. Specifically, Defendants argue they should receive eight hours for the deposition of Mr. Paugh for BB Land, LLC, eight hours for Mr. Broda for JB Exploration 1, LLC, as well as eight hours for Mr. Paugh for JB Exploration 1, LLC, eight hours for Mr. Broda for BB Land, LLC, eight hours for Mr.

² Plaintiffs and Third-Party Defendants state: "There must be some limit on this discovery harassment and bullying". *Id.* at 4-5.

Paugh for Jay-Bee Production Company, eight hours for Mr. Paugh for Jay-Bee Oil & Gas Inc., eight hours for Mr. Broda for Jay-Bee Oil & Gas, Inc., and eight hours for the individual deposition of Mr. Paugh. *Id.* If the Court were to adopt Defendants' argument, there would be sixty-two more hours of depositions to be taken in this matter.

The Court was clear, when balancing the considerations of the information still left that was needed with the immense time the depositions of these two individuals has taken in this litigation, that the eight hours for each (eight hours for Mr. Broda and eight hours for Mr. Paugh) was to be spent concentrating on the information counsels felt still was left to be obtained. If the Court were to adopt Defendants' argument, and construe the decision to encompass sixty-two more hours of deposition for Mr. Paugh and Mr. Broda altogether, it would have been like the October 8, 2019 hearing and findings had not occurred. All parties would still be subject to several more days of deposition, which was the entire basis of the initial motion for protective order and the hearing that took place on October 8, 2019. Instead, the Court intended the parties to experience two more days of depositions: one day (eight hours) spent deposing Mr. Broda on all outstanding issues related to his testimony in this matter and one day (eight hours) spent deposing Mr. Paugh on all outstanding issues related to his testimony in this matter. The undersigned stated at the October 8, 2019 hearing that this time limit was meant to inspire counsel to get to the point and get the information needed, after considering the fact that five days of deposition was already undertaken with a purported need for more.

For all of these reasons, the Court finds Defendants' Motion to Compel Plaintiffs and Third-Party Defendants to Comply With Court Order and Request for Sanctions must be DENIED. The Court reiterates that it has ORDERED the continued deposition of Mr. Broda and

Mr. Paugh, with a limit to eight more hours total for each person. If any other depositions of any other persons need to be taken in this matter, those of party witnesses are also hereby limited to eight hours each, and any non-party witness is limited to four hours each.

A. Attorney's Fees


Finally, the Court addresses Defendants' request for attorney's fees and finds that that request shall be denied. *See* Defs' Mot., p. 12. As the instant motion is denied, an award of attorney's fees is not warranted. For this reason Defendants' motion is DENIED as to the request for attorney's fees and/or sanctions.

For these reasons, the Court must find Defendants' Motion to Compel Plaintiffs and Third-Party Defendants to Comply With Court Order and Request for Sanctions must be DENIED.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that upon Defendants Blackrock Enterprises, LLC and Michael L. Benedum's Motion to Compel Plaintiffs and Third-Party Defendants to Comply With Court Order and Request for Sanctions is hereby DENIED. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
Attest: Millie Farnsworth, Circuit Clerk
Pleasants County of West Virginia



JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

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